IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No. 4227 of 1990
To
SPECIAL CIVIL APPLICATION No. 4230 of 1990

For Approval and Signature:

Hon'ble MISS JUSTICE R.M. DOSHIT

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

NOORMAHMAD MUSABHAI

Versus

STATE OF GUJARAT

Appearance:

MR HN ACHARYA for Mr GM JOSHI for Petitioners No.1-2/7

MR KT DAVE for Respondents No. 1-5

CORAM : MISS JUSTICE R.M.DOSHIT

Date of decision: 31/01/2002

ORAL JUDGEMENT

This group of four petitions arises from the order of the State Government cancelling the permission for Non-Agricultural use granted in respect of the land in question by the Taluka Development Officer, Mangrol,

District-Surat. All the petitions involve identical questions and are, therefore, with the consent of the learned advocates, disposed of by this common judgment.

In Special Civil Application No. 4227 of 1990, the petitioner had on 21st February, 1983 applied for permission for non-agricultural use of the land Survey No. 684, admeasuring 24,972 sq.mtrs. of village Tarsali, Taluka-Mangrol. Such permission was granted by the Taluka Development Officer on 24th February, 1983. The said order was taken into revision by the State Government under the powers conferred upon it under Section 211 of the Bombay Land Revenue Code by issuing a notice to show cause on 8th May, 1984. The said order dated 24th February, 1983 was set-aside by the State Government, under its order dated 27th July, 1984. In Special Civil Application No. 4228 of 1984, the petitioner had on 25th July, 1983 applied for permission for Non-Agricultural use of the land bearing survey no. 52-Paiki, admeasuring 19426 sq.m., situated at Kuvarada. Taluka-Mangrol. The Taluka Development Officer, Mangrol under his order dated 19th August, 1983 granted such permission. The said order was taken into revision by the State Government under the powers conferred upon it under Section 211 of the Code by issuing a notice to show cause on 8th May, 1984. The said order of 19th August, 1983 was set-aside by the State Government under its order dated 4th August, 1984. In Special Civil Application No. 4229 of 1990, the petitioner had on 25th July, 1983 applied for permission for non-agricultural use of the land bearing survey no. 49-50-53 admeasuring 25,012 sq.mtrs. of village Kuvarada. Such permission was granted by the Taluka Development Officer on 19th August, 1983. The said order was taken into suo-motu revision by the State Government under the powers conferred upon it under Section 211 of the Code by issuing a notice to show cause on 8th May, 1983. The said order 19th August, 1983 was set-aside by the State Government under its order dated 27th July, 1984. In Special Civil Application No. 4230 of 1990, the petitioner had on 13th September, 1982 applied for permission for NA use of the land bearing Survey No. 689, admeasuring 15,321 sq.mtrs. of village Tarsali, Taluka Mangrol. Such permission was granted by the Taluka Development Officer, Mangrol on 4th November, 1982. The said order was taken into suo-motu revision by the State Government in exercise of the powers conferred upon it under Section 211 of the Code by issuing a show cause notice dated 8th May, 1983. The said order was set-aside under the Government order dated 23rd July, 1984. Feeling aggrieved by the orders of the State

Government cancelling the above referred NA permissions granted by the Taluka Development Officer, Mangrol the concerned petitioners preferred Special Civil Applications Nos. 5455 of 1983; 5365 of 1984; 5368 of 1984 and 5458 of 1984 respectively. All the said writ petitions, alongwith similar other writ petitions, were decided by this Court [Coram : A.M Ahmadi, J., as he then was] by his common judgment and order dated 16th June, 1987. Under the said common judgment, all the impugned orders of the State Government were set-aside and the matters were remanded to the State Government for decision afresh in light of the proposition of law made in the said judgment and the observations made therein. After the remand, the impugned orders were examined afresh and under the impugned orders dated 27th August, 1989, the order dated 6th July, 1989 and the order dated 31st August, 1989, the relevant orders of permission for NA use were ordered to be cancelled. Feeling aggrieved, the petitioners have preferred the present petitions.

The only ground which is urged before me is that of delay i.e., powers of revision conferred upon the State Government under Section 211 of the Code has been exercised belatedly i.e., months after the date of issuance of relevant permission for NA use. The very contention was urged before the Court in earlier set of petitions also. His Lordship was pleased to consider the said contention and the various rulings. Having considered the rival contentions, the Court observed that, `the Secretary [Appeals] ought to have decided the question of reasonableness of time, in light of the aforesaid Supreme Court judgment. As the Secretary [Appeals] relied upon the decision of this Court, he did not consider it necessary to state the facts and circumstances having bearing on the question whether the impugned action was initiated after a lapse of reasonable period. In cases where the action prima facie appears to be belated, the authority can pin point special and peculiar facts to show that it was impossible to commence the action earlier in point of time. Since no hard and fast rule as to limitation can be laid down, it would depend on the facts and circumstances of each case. However, a distinction between cases under Section 65/211 and other orders under the Code, proposed to be revised, must not be forgotten. It seems, therefore, necessary to remand the cases to the Secretary [Appeals] to re-examine the question of delay in the light of the observations mae in the judgment rendered in Special Civil Applications Nos. 4577 and 6510 of 1984 disposed of today and hereinabove.'

Thus, the Secretary [Appeals] was directed to consider the question of delay in exercising power under section 211 of the Code, keeping in view the facts of each case in light of the observations made in the said judgment and in the judgment rendered in Special Civil Applications No. 4577 and 6510 of 1984. However, a bare perusal of the impugned orders made by the State Government [Additional Chief Secretary, Revenue Department (Appeals)] discloses that the authority below has not undertaken the exercise of considering the question as directed. In neither of the present cases, the State Government has considered the relevant facts nor it has been shown that the action could not have been initiated earlier than the date on which it was initiated. Moreover, the same is not explained before this Court by filing counter affidavit either. In the circumstances, it is required to be held that the impugned orders have not been made in consonance with the observations made and the directions issued by this Court [Coram : A.M Ahmadi, J., as he then was], under its above referred judgment dated 16th June, 1987 rendered in Special Civil Application No. 5451 of 1984 and other allied matters. The impugned orders, therefore, require to be quashed and set-aside.

For the aforesaid reason, all these writ petitions are allowed. The impugned orders of the State Government [Annexure-C to the respective petition] are quashed and set-aside. Rule nisi issued in each of the petitions is made absolute. There shall be no order as to costs. The registry shall maintain copy of this order in each of the petitions.

[Ms. R.M Doshit, J.]

Prakash*